

**ENTERED**

June 15, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

TEVIN WALLACE

§  
§  
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§  
§

CRIMINAL NO H-16-264-01

**ORDER**

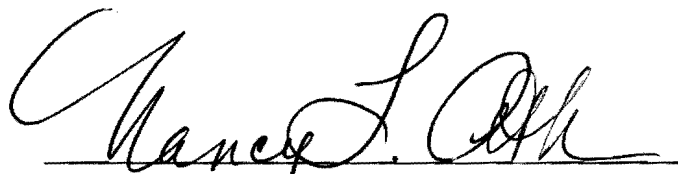
This criminal case is before the Court on Defendant Tevin Wallace's Motion to Appoint Counsel [Doc. # 42]. Wallace seeks to have counsel appointed for purposes of filing a motion pursuant to 28 U.S.C. § 2255, in which Wallace intends to assert a claim that his trial counsel was constitutionally ineffective for failing to file a timely notice of appeal. Wallace is currently pursuing a direct appeal (Fifth Circuit Case No. 17-20384), in which he is represented by counsel. Indeed, Defendant's current attorney for his direct appeal was appointed May 4, 2018, almost nine months after this Court denied his request for extension of time to file the notice of appeal.

Should the Fifth Circuit continue to consider Defendant's direct appeal and allow it to proceed to a decision on the merits, there would be no prejudice to Defendant from any failure by his trial counsel to file a timely notice of appeal. Should the Fifth Circuit dismiss the direct appeal as untimely, Defendant may at that point consider filing a § 2255 motion. The Court notes, however, that there is no right

to counsel for purposes of pursuing § 2255 relief. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *United States v. Riggs*, 314 F.3d 796, 799 (5th Cir. 2002). As a result, it is hereby

**ORDERED** that Defendant's Motion to Appoint Counsel [Doc. # 42] for purposes of filing a § 2255 Motion is **DENIED without prejudice** as premature.

SIGNED at Houston, Texas this **15th** day of **June, 2018**.



NANCY F. ATLAS  
SENIOR UNITED STATES DISTRICT JUDGE